

SENATE BILL REPORT

SB 5797

As Reported by Senate Committee On:
Agriculture & Rural Economic Development, February 12, 2009

Title: An act relating to exemptions from solid waste handling permit requirements.

Brief Description: Regarding exemptions from solid waste handling permit requirements.

Sponsors: Senators Haugen, Ranker, Brandland and Hatfield.

Brief History:

Committee Activity: Agriculture & Rural Economic Development: 2/03/09, 2/12/09 [DPS].

SENATE COMMITTEE ON AGRICULTURE & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5797 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Ranker, Vice Chair; Schoesler, Ranking Minority Member; Haugen, Morton and Shin.

Staff: Sam Thompson (786-7413)

Background: Anaerobic digesters are structures designed to compost (or "digest") livestock manure and other organic waste while limiting access to oxygen, creating methane and other gases that are then burned as fuel to generate electricity. Three anaerobic digesters currently operate in Snohomish, Whatcom, and Yakima Counties; a fourth is currently under construction in Skagit County.

Use of organic solid waste (including food processing waste) as feedstock in anaerobic digesters has raised issues regarding applicability of the state Solid Waste Management Act, which includes several permitting requirements for handling and disposal of solid waste.

The Natural Resources Conservation Service (NRCS), an agency of the U.S. Department of Agriculture (USDA), provides technical assistance to private land owners and managers. The NRCS has adopted standards regarding design, construction, and operation of anaerobic digesters and waste storage facilities.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill (Recommended Substitute): An anaerobic digester that complies with certain conditions is exempt from solid waste permitting requirements. To qualify for the exemption, the digester or its owner or operator:

- must provide the Department of Ecology (DOE) or jurisdictional health department with notice of intent to operate under the exemption conditions, and comply with guidelines issued by DOE and the Washington State Department of Agriculture (WSDA);
- must process at least 50 percent livestock manure;
- may process no more than 30 percent imported organic waste-derived material and comply with restrictions regarding use of that material as feedstock;
- must comply with NRCS design and operating standards;
- must allow inspection by DOE or the jurisdictional health department to verify compliance with exemption conditions; and
- must submit an annual report to DOE or the jurisdictional health department concerning use of nonmanure feedstock and any required compliance testing.

Waste Used as Feedstock. "Organic waste-derived material," broadly defined to include varied vegetative, wood, food, and composting wastes, not including biosolids, and other DOE-approved wastes, except for material collected through municipal solid waste collection programs, originating off of the farm or other site where the digester is being operated must:

- be preconsumer in nature;
- be fed into the digester within 36 hours of receipt at the digester;
- if likely to contain animal byproducts, be previously source-separated at a facility licensed to process food;
- if containing bovine processing waste, be from animals approved by USDA inspectors and not contain certain risk material;
- if containing sheep carcasses or sheep processing waste, not be fed into the digester;
- be stored and handled to protect surface water and groundwater;
- be received or stored in structures complying with an NRCS standard, be approved by an NRCS representative, or meet certain construction industry standards; and
- be managed to prevent migration of odors beyond property boundaries and minimize attraction of flies, rodents, and other vectors.

Digestate. "Digestate," defined as substances remaining following anaerobic digestion of organic material in a digester, must:

- be managed under a dairy nutrient management plan addressing management and use of digestate;
- meet certain compost quality standards or be sent to an off-site facility for further treatment to meet compost quality standards; or
- be processed or managed in an alternate manner approved by DOE.

Digestate managed under a dairy nutrient management plan addressing management and use of digestate is no longer considered a solid waste, and use of digestate from a digester that complies with exemption conditions is exempt from solid waste permitting requirements.

Guidelines. By August 1, 2009, DOE and WSDA, in consultation with the Department of Health, must issue guidelines for anaerobic codigestion of livestock manure and organic waste-derived material explaining steps necessary to meet exemption conditions.

Failure to Comply. A digester that does not comply with exemption conditions may be subject to solid waste permitting requirements and \$1,000 per day penalty provisions applying to violations of other, existing solid waste permitting exemptions.

DOE may issue an appropriate order to a person violating an exemption condition and other, existing exemptions to solid waste permitting requirements to ensure compliance with conditions. Orders may be appealed to the Pollution Control Hearings Board under established procedures.

EFFECT OF CHANGES MADE BY AGRICULTURE & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute): Changes: (1) reorder sections and subsections and clarify language; (2) provide that digestate must be managed under a dairy nutrient management plan specifically addressing digestate, meet compost quality standards, or be managed in alternate manner approved by DOE; (3) clarify that digestate managed under a dairy nutrient management plan specifically addressing digestate is no longer considered a solid waste; (4) provide that imported organic waste-derived material must be received or stored in structure meeting an NRCS standard, be approved by an NRCS representative, or meet certain construction industry standards; and (5) add definitions of "best management practices" and "digestate."

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This measure promotes an innovative source of renewable energy. Conditions imposed on digester operations, which were negotiated with regulatory agencies, are workable. Concerns regarding emissions are already addressed in air quality permits. While the bill is laudable, it needs clarification, including revision of the definition of "organic waste-derived material" to ensure adequate environmental protection.

CON: Limits on manure and waste feedstock should be based on mass rather than volume. Ammonia and other emissions of concern are not adequately addressed in current language.

OTHER: Carbon benefits provided by digesters are important. While the bill language is somewhat complex, guidelines that will be provided by the agencies will be clear and easy to read. Provisions providing for appeals of penalties to the Pollution Control Hearings Board benefit operators because such appeals are less costly and burdensome than judicial appeals.

Persons Testifying: PRO: John Sayre, Andy Werhoven, Qualco Energy; Jay Gordon, Washington State Dairy Federation; Kevin Maas, Farm Power; Vicki Austin, Washington Refuse & Recycling Association; Jerry Smedes, Cedar Grove Composting.

CON: Dennis Burke, E³ .

OTHER: Jeff Canaan, Department of Agriculture; Laurie Davies, Department of Ecology.